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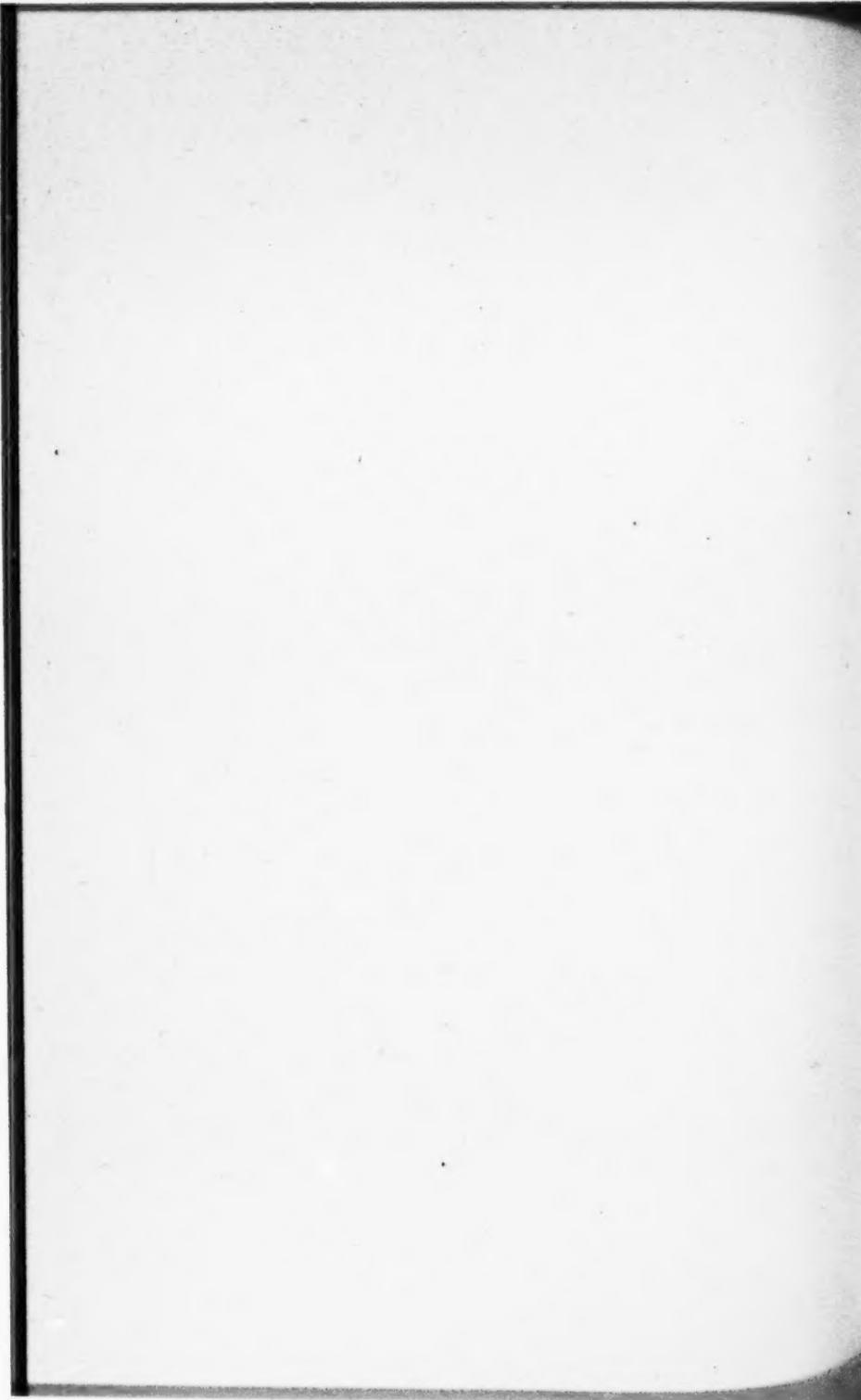
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In the Supreme Court of the United States

OCTOBER TERM, 1943

No. 344

C. F. MOODY, PETITIONER

v.

CLAUDE R. WICKARD, SECRETARY OF AGRICULTURE,
AND HENRY MORGENTHAU, JR., SECRETARY OF THE
TREASURY, AND UNITED STATES OF AMERICA,
INTERVENOR

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE DISTRICT OF
COLUMBIA

BRIEF FOR CLAUDE R. WICKARD AND HENRY MORGENTHAW,
JR., AND THE UNITED STATES OF AMERICA IN
OPPOSITION

OPINION BELOW

The opinion of the Court of Appeals (R. 79-82)
is not yet reported.

JURISDICTION

The judgment sought to be reviewed was entered June 30, 1943 (R. 83). The petition for writ of certiorari was filed September 11, 1943. The jurisdiction of this Court is invoked under Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

(1)

QUESTIONS PRESENTED

1. Whether the federal district court of North Carolina, in condemnation proceedings instituted by the United States, had jurisdiction to enter a money judgment against the Government for the value of the land condemned.
2. Whether mandatory relief will be granted against the Secretary of Agriculture and the Secretary of the Treasury to enforce a judgment against the United States entered in condemnation proceedings brought to acquire lands for national forest purposes when no specific appropriation to pay such judgment has been made and the National Forest Reservation Commission has not approved the price of acquisition as required by the Weeks Forestry Act.
3. Whether, when an owner contracts to sell land to the United States for \$4 per acre with a provision authorizing condemnation proceedings in case the title is not satisfactory, the United States may recover the amount by which the judgment in proceedings brought to condemn the land exceeded \$4 per acre, the title having been unsatisfactory and the landowner, in violation of the contract, having procured the entry of a judgment in excess of the contract price.

STATUTES INVOLVED

The material portions of the following statutes are printed in the record: Act of August 1, 1888,

c. 728, 25 Stat. 357, 40 U. S. C. secs. 257, 258 (R. 70); Weeks Forestry Act of March 1, 1911, c. 186, 36 Stat. 961, as amended, 16 U. S. C. secs. 513-521 (R. 70-75); the Tucker Act, Judicial Code, sec. 24 (20), 28 U. S. C. sec. 41 (20) (R. 75-76); and North Carolina Code (1939) sec. 1723 (R. 76-77).

STATEMENT

Petitioner, C. F. Moody, commenced this proceeding against the Secretary of Agriculture and the Secretary of the Treasury by complaint filed May 2, 1941, seeking to enforce a condemnation judgment of the United States District Court for the Western District of North Carolina. The complaint sought a mandatory injunction compelling the Government officers to take proper steps to have the judgment paid, including, if necessary, submission of the judgment to Congress. The officers answered and the United States intervened, alleging a claim for breach of a contract by which Moody agreed to convey the land condemned to the Government. There is no dispute as to the facts, which may be summarized as follows:

In December 1934, Moody executed an option to sell a tract of land in Macon County, North Carolina, to the United States for \$4 per acre (R. 37-39). The option provided that Moody would convey complete title to the United States and if he was unable to establish a title satisfac-

tory to the Attorney General "then and in that event the United States will, if it deems advisable, institute proceedings for the condemnation of said lands." The option further provided that upon acceptance the United States might use and administer the lands for national forest purposes without charge. The National Forest Reservation Commission, which by the Weeks Forestry Act of March 1, 1911, c. 186, 36 Stat. 961, 16 U. S. C. sec. 516, is required to approve land acquisitions for national forests, approved the purchase of Moody's land at \$4 per acre. By letter of January 21, 1935, Moody was notified of such approval and of the acceptance of his option (R. 40).

On August 21, 1936, condemnation proceedings were instituted in the North Carolina federal district court. The petition referred to the option and alleged that Moody's title had been found to be unsatisfactory to the Attorney General. (R. 9-3.) Moody's answer, while admitting execution of the option, alleged that it had expired prior to institution of the proceeding and also alleged a counter-claim arising from an asserted entry on the land by Government agents (R. 14-15). The court, on February 11, 1937, found that good title could not be acquired by deed and that the United States was entitled to condemn the land and ordered that upon appraisal and payment of the appraised value into court, title would vest in the United States (R. 44-48, 52-57).

Commissioners were appointed who appraised Moody's land at \$4 per acre (R. 16-17). However, upon exceptions of Moody, a jury trial was had and on August 26, 1937, a verdict was returned fixing the value of Moody's land at \$6 per acre (R. 21). On May 16, 1938, the United States moved to abandon the proceedings and on August 30, 1938, filed a certificate of abandonment which stated that the National Forest Reservation Commission had approved the purchase at \$4 per acre, that payment could not be made, even in condemnation proceedings, of more than the purchase price approved by the Commission and that the obligation of funds available to purchase this land had been cancelled (R. 59-61). Moody opposed the motion to dismiss, asserting that the Government had already taken title and possession (R. 61-62).

On August 26, 1938, the Circuit Court of Appeals for the Fourth Circuit rendered its decision in *Wachovia Bank & Trust Co. v. United States*, 98 F. 2d 609, settling many questions as to the effect of contracts formed by acceptance of options to purchase land pursuant to the Weeks Forestry Act. Upon authority of that decision the United States, on December 3, 1938, moved to withdraw the motion to abandon and asked either that the exceptions to the commissioners' report be overruled and judgment entered at \$4 per acre or that a hearing be held on the exceptions (R. 62-63). On January 24, 1939,

the North Carolina district court judgment here involved was entered (R. 20-24).¹ After reciting the previous proceedings, the court found that the single issue tried by the jury was the reasonable market value of the land, that there was no evidence in the record that the Government had accepted the option and that Government agents had from time to time gone upon the land and removed timber. The court expressed the opinion in the judgment that Moody had been deprived of title to and use of the property and that this constituted a taking. The operative portion of the judgment granted the Government's motion to withdraw its motion to abandon, decreed that the Government "is the owner in fee simple and entitled to the immediate possession" of the land and gave judgment against the United States for \$6 per acre with interest from August 26, 1937. An appeal by the United States from this judgment was not prosecuted.²

The judgment not having been paid, Moody brought this proceeding on May 2, 1941, in the District Court for the District of Columbia seeking to compel the Government officers to procure such

¹ On June 3, 1939, the judgment was amended over objection of the Government so as to alter slightly the recital of paragraph 9 stating what had occurred at a hearing on August 30, 1938 (R. 25-26).

² Petitioner asserts that the United States has continued in the use and possession of the property (Pet. 2, 12, 13, 16, 20, 21, 22). This assertion is unsupported by the record and is contrary to the fact.

payment (R. 1-8). On November 3, 1941, a motion to dismiss was sustained as to the Attorney General, who had been joined as a defendant, but was overruled as to Secretary Wickard and Secretary Morgenthau (R. 29-30). On December 9, 1942, the district court entered judgment dismissing both the complaint and the complaint in intervention (R. 48). It concluded (1) that the condemnation judgment was valid and binding; (2) that the judgment was *res judicata* of the Government's claim; and (3) that the court was without authority to grant the relief requested against the Government officers (R. 46-47). Both Moody and the United States appealed from this judgment (R. 49, 79).

The Court of Appeals affirmed on the ground that the North Carolina district court did not have jurisdiction to enter a money judgment against the United States and that its judgment was therefore void (R. 79-82). Having reached this conclusion, the court determined that it was unnecessary to consider any of the questions raised by the complaint in intervention (R. 82).

ARGUMENT

1. Petitioner contends that a personal money judgment may be entered against the United States in condemnation proceedings. But he does not refer to a single instance where such a judgment has been sustained. On the contrary, in *United States v. Boston, C. C. & N. Y. Canal Co.*,

271 Fed. 877, 880-881 (C. C. A. 1), a district court decree purporting to reserve a right to enter such a judgment was reversed on appeal, the court holding that the statutes called for the usual conditional condemnation judgment, i. e., that upon payment title would vest in the condemnor. See *Mason City & Ft. Dodge R. Co. v. Boynton*, 158 Fed. 599 (C. C. A. 8).

Relying upon *United States v. The Thekla*, 266 U. S. 328, petitioner apparently contends that the judgment was authorized simply because the United States instituted condemnation proceedings (Pet. 16-19). Analogous contentions were rejected in *United States v. Shaw*, 309 U. S. 495, and *United States v. U. S. Fidelity Co.*, 309 U. S. 506, where this Court made it plain that the doctrine of *The Thekla* is limited solely to collision claims in admiralty, and that "without specific statutory consent, no suit may be brought against the United States," whether in the form of an original action or a set-off or a counterclaim. *United States v. Shaw*, 309 U. S. 495, 500; *Nassau Smelting Works v. United States*, 266 U. S. 101, 106. It is clear that the Act of August 1, 1888, c. 728, 25 Stat. 357, 40 U. S. C., secs. 257, 258, which gives to the federal district courts jurisdiction of condemnation proceedings brought by the United States and provides that the practice and procedure shall conform to state law, is not a consent to entry of a money judgment. *Carlisle v. Cooper*, 64 Fed. 472 (C. C. A. 2); *United States v. Shingle*,

91 F. 2d 85, 89 (C. C. A. 9); *United States v. John Ii Estate*, 91 F. 2d 93, 94 (C. C. A. 9); *Kanakanui v. United States*, 244 Fed. 923 (C. C. A. 9); *United States v. Knowles' Estate*, 58 F. 2d 718 (C. C. A. 9). In fact, the North Carolina condemnation procedure does not authorize a money judgment but merely a conditional condemnation judgment which expires in two years (R. 76-77).

Despite the absence of congressional consent, petitioner seeks to support the North Carolina judgment because of the statement of this Court in *Danforth v. United States*, 308 U. S. 271, and the repetition of the statement in other decisions (Pet. 13-15) that "until taking, the condemnor may discontinue or abandon his effort." Petitioner draws the negative inference that after taking physical possession the condemnor cannot abandon the proceedings and concludes therefrom that a money judgment may be awarded against the United States. These inferences are unwarranted, for this Court in the *Danforth* case recognized that "the determination of the award is an offer subject to acceptance by the condemnor." 308 U. S. 271 at p. 284. And notwithstanding the fact that "the government was in possession and control of the canal at the time the petition for condemnation was filed," the court in *United States v. Boston, C. C. & N. Y. Canal Co.*, 271 Fed. 877, 880 (C. C. A. 1), *supra*, held that a money judgment could not be entered against the

United States. See also *Cherokee Nation v. Kansas Railway Co.*, 135 U. S. 641.³

As the court below held (R. 81-82), petitioner has his remedy under the Tucker Act. Such suit would not, as petitioner asserts (Pet. 16-17), involve relitigation of the issues already decided. The property has been abandoned. Hence, recovery under the Tucker Act would not represent market value of the land but would be limited to the damage, if any, accruing because the United States had removed some of the timber therefrom and had occupied the property for a time as national forest lands pursuant to the contract which petitioner did not observe (R. 39).

2. Even assuming that the North Carolina judgment is valid, petitioner was not entitled to mandatory relief against the Government officers. The land was sought to be acquired under the Weeks Forestry Act, which requires that the price be approved by the National Forest Reservation Commission, 16 U. S. C. sec. 513 (R. 70-75). The Commission approved the contract price of \$4 per acre (R. 40) but has never approved any larger amount. Funds for the purchase were made available by the Emergency Relief Appropriation Act of April 8, 1935, c. 48, 49 Stat. 115. By the Supplemental Appropriation Act of December 17,

³ *Hessel v. A. Smith & Co.*, 15 F. Supp. 953 (E. D. Ill.) (Pet. 15) and *United States v. Lynah*, 188 U. S. 445 (Pet. 19) are irrelevant here for they arose under statutes in which the United States had consented to suit, i. e., the Declaration of Taking Act, and the Tucker Act, respectively.

1941, Sec. 501 (a), 591, 55 Stat. 810, 837, the Secretary of the Treasury was authorized to pay "such claims as are certified to him by the Comptroller General of the United States which were otherwise properly payable under the provision of the following Acts: Emergency Relief Appropriation Act of 1935 (49 Stat. 115) * * *." Petitioner's claim has never been certified by the Comptroller General, who is not a party to this action.

Obviously, petitioner cannot compel payment contrary to the Weeks Forestry Act.* Nor can he compel disbursement of the funds without certification by the Comptroller General. Cf. *Reeside v. Walker*, 11 How. 272; *Redfield v. Windom*, 137 U. S. 636; *Haskins Bros. & Co. v. Morgenthau*, 85 F. 2d 677 (App. D. C.), certiorari denied, 299 U. S. 588.

3. If the North Carolina judgment was valid, the district court erroneously dismissed the Government's complaint in intervention. The district court dismissed the Government's claim on the ground that the North Carolina judgment was *res judicata* of the rights asserted (R. 46). But the North Carolina court refused to reduce its judgment to the price stipulated in the contract solely because no issue as to the contract had been litigated in the condemnation proceedings (R. 22-23, 45-46). The claim for breach of contract pre-

* The fact that condemnation proceedings were instituted to clear title does not render the Weeks Act inapplicable. 16 U. S. C. sec. 517a (R. 73); *United States v. Graham & Irvine*, 250 Fed. 499 (W. D. Va.).

sents an entirely different cause of action from the proceeding to condemn. *Woodbury v. District of Columbia*, 92 F. 2d 202 (App. D. C.). Hence, the rule of *res judicata* preventing relitigation of questions already settled or of causes of action already determined has no application. *Cromwell v. County of Sac*, 94 U. S. 351.

It is equally clear that the contract is binding and enforceable. *Danforth v. United States*, 308 U. S. 271; *Wachovia Bank & Trust Co. v. United States*, 98 F. 2d 609 (C. C. A. 4). Petitioner is not, therefore, entitled to compel payment of any amount in excess of the \$4 per acre stipulated in the contract. In order to assure preservation of this question in the event Moody's petition is granted, the Government has obtained an extension of time within which to file a petition for a writ of certiorari.

CONCLUSION

The decision of the court below is correct and no conflict of decisions is involved. Therefore, the petition for a writ of certiorari should be denied.

Respectfully,

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OCTOBER 1943.

